

# 1997

# North Dakota Financial Institution Tax Instruction Booklet Form 35



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STATE OF NORTH DAKOTA

## OFFICE OF STATE TAX COMMISSIONER

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To All Financial Institutions:

As a result of a joint effort between the Office of State Tax Commissioner and the banking community, the 1997 North Dakota Legislature passed legislation - Senate Bill 2331 - which significantly changed the tax law for financial institutions. This legislation repealed North Dakota Century Code chs. 57-35, 57-35.1, and 57-35.2, and replaced them with a new chapter, N.D.C.C. ch. 57-35.3.

The new legislation, while including many aspects of the previous bank tax laws, contains a number of new provisions which will promote fairness and lessen the burden on financial institutions and county governments by promoting greater efficiency in the distribution of tax dollars. In addition, to promote uniformity among the states in which a financial institution does business, the legislation expanded the definition of financial institution and adopted apportionment provisions to be used by multistate financial institutions. The definitions and apportionment provisions are based on the cooperative work of the nation's financial services industry and the Multistate Tax Commission.

New for 1997 is the manner in which the financial institution tax return will be completed and filed. A computer program, provided on the Office of State Tax Commissioner's home page, has been designed to assist taxpayers in completing their return. The program asks questions, determines which schedules are needed and updates calculations as data is entered. The return is filed by saving the information to a diskette and mailing the diskette along with the required enclosures to the Office of State Tax Commissioner.

This booklet contains the instructions implementing the new financial institution tax. These instructions used in conjunction with the provided program will assist taxpayers in completing their returns. The new tax return, Form 35, replaces North Dakota Forms 39B, 49 and 49.1, and in some cases, Form 40.

Please read the instructions carefully. If you have questions that the instructions do not answer, please write to the Office of State Tax Commissioner at the above address, or call 701-328-2046. For the speech and hearing impaired, the local TDD/TTY number is (701)328-2778. The in-state toll free TDD/TTY number is 1-800-453-8950.

Sincerely,

Rick Clayburgh  
TAX COMMISSIONER

# NEW FOR 1997!

**This booklet contains instructions for completing Form 35, North Dakota Financial Institution Tax Return. Beginning with taxable year 1997, Form 35 must be used by financial institutions as defined under North Dakota Century Code ch. 57-35.3. Form 35 is completed by using a computer program developed by the Office of State Tax Commissioner and will be filed on a diskette which replaces the traditional paper format.**

## 1997 legislation

The 1997 North Dakota Legislature passed legislation (*Senate Bill 2331*) changing the tax law covering financial institutions. North Dakota Century Code chs. 57-35, 57-35.1 and 57-35.2 were repealed and replaced by a new chapter, N.D.C.C. ch. 57-35.3. The legislation is effective for taxable years beginning after December 31, 1996.

## Financial institution tax

The tax under N.D.C.C. ch. 57-35.3 is imposed on every financial institution for the grant to it of the privilege of transacting, or for the actual transacting of, business in North Dakota. The definition of financial institution in the new chapter includes not only the entities covered by the old chapters, but also includes bank holding companies, production credit associations and leasing companies which may have been subject to corporation income tax under N.D.C.C. ch. 57-38. See **Who must file** in the general instructions in this booklet for the definition of financial institution.

In general, the tax liability of the financial institution is determined by multiplying North Dakota taxable income by seven percent (7%). This amount, which may not be less than fifty dollars (\$50.00), is divided between the state general fund and the financial institution tax distribution fund. The state general fund receives 2/7 of the tax while the financial institution tax distribution fund receives 5/7 of the tax.

The state general fund portion of the tax must be paid on or before April 15 following the end of the taxable year. The financial institution tax distribution fund portion of the tax must be paid on or before January 15 of the second year following the taxable year. Both payments must be made to the Office of State Tax Commissioner.

## Apportionment of income

If a financial institution conducts business both within and without North Dakota, the financial institution must apportion its business income to North Dakota according to the apportionment provisions contained in N.D.C.C. ch. 57-35.3. All items of nonbusiness income - income that is not includable in the apportionable income base - must be allocated according to the provisions of N.D.C.C. ch. 57-38.1.

## Subchapter S corporation election not recognized

If a financial institution elects and is granted Subchapter S corporation status for federal income tax purposes, the Subchapter S status is not recognized for North Dakota financial institution tax purposes, and the financial institution must file Form 35 and pay the tax. In these cases, the term "federal taxable income" in North Dakota Form 35 refers to income as reported on Federal Form 1120S, Schedule K, line 23.

In addition, the financial institution's shareholders—limited to individuals, estates and trusts—must make an adjustment in computing their North Dakota income tax liability. In general, the purpose of the adjustment is to remove the shareholder's pro rata share of the corporation's income or loss for North Dakota financial institution tax purposes from the computation of the shareholder's North Dakota income tax liability. The financial institution must provide each of its shareholders with a statement informing them about the adjustment. For details on this statement, see **Subchapter S corporation shareholder statement** on page 3 of the instructions.

## For Form 35 . . .

Obtain the computer program to complete Form 35 from the Office of State Tax Commissioner's home page at:  
<http://www.state.nd.us/taxdpt/97fit.exe>

## For assistance . . .

### Call

- (701)328-2046
- TDD/TTY users -  
(701)328-2778 or  
1-800-453-8950  
(toll free within North Dakota)

### Write to

Office of State Tax Commissioner  
State Capitol, 16th Floor  
600 East Boulevard Avenue  
Bismarck, ND 58505-0599

### Internet

The address is:

<http://www.state.nd.us/taxdpt>

## Before filing . . .

- **Check all schedules for completeness**
- **Enclose all required worksheets**
- **Enclose a complete copy of the federal income tax return**
- **If included in a consolidated federal tax return, enclose:**
  1. A copy of pages 1-4 of the consolidated federal tax return; and
  2. A copy of the pro forma separate company federal tax return(s); or
  3. A schedule of gross income and deductions, by company, supporting consolidated taxable income
- **Sign the financial institution tax diskette remittance form**
- **Enclose labeled diskette**
- **Enclose appropriate payment**

## Where to file and pay . . .

### Mail to

Office of State Tax Commissioner  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0599

### Make check or money order payable to

State Tax Commissioner

## Specific instructions for the financial institution tax program

The computer program, developed in a menu format, is found on the Office of State Tax Commissioner's home page at <http://www.state.nd.us/taxdpt/97fit.exe>. Buttons, on screen instructions, and prompts are provided to assist in operating and installing the program.

To enter data (*dollar amounts must be entered as whole dollars*) use the "Tab" key to move to the data input fields; to move backward in the data input fields, use the "Tab" and "Shift" keys together. Corrections are easy: tab to the data input field and re-enter the correct data. Use the mouse pointer to click the desired options, and to answer the "yes"/"no" questions.

A second return may be completed (*after saving the just completed return to a diskette*) by returning to the Main Menu and selecting "Start New Return." **Caution:** when the "Start New Return" option is selected, all data previously entered in the program will be automatically deleted and a blank Form 35 and supporting schedules will be opened.

Test the program a few weeks before April 15, so that difficulties completing the program can be resolved before payment is due. Delete any "test" data entered into the schedules by clicking on the "Start New Return" button on the Main Menu before completing the return to be filed.

For technical assistance on installing or running the program, call 701-328-1253.

### Equipment requirements

- IBM compatible personal computer using a 386SX microprocessor (*486 or higher recommended*);
- Minimum of 8 MB of RAM (*16 MB recommended*);
- Approximately 7 MB of available hard disk space;
- VGA 256 or higher resolution monitor;
- Keyboard and mouse;
- 3½" high-density disk drive;
- Microsoft Windows 3.1 (*or later version*); and
- Two 3½" high-density diskettes.

### Install (download) the program

Close all applications before beginning the installation.

When installing the program, if the default installation directory "C:\97FIT" is changed, the uninstall feature will not work.

### This software comes in two download options:

- **Download Option One** - Use this option when using the Financial Institution Tax Program on the same computer as is used to download the program. Also use this option if the program can be transferred to another computer using a network or a device like a Zip drive that will accommodate the 4.1 MB file.

This option allows the file "97FIT.EXE" that contains the entire Financial Institution Tax Program to be downloaded in one file which is 4.1 MB in size.

Download into a temporary directory. Run the "97FIT.EXE" file to extract. Please note that this file extracts into the temporary directory on the hard drive and begins installation automatically.

- **Download Option Two** - If the computer used to run the Financial Institution Tax Program does not have Internet access, use this option to download the program to a computer that does have access. The program can then be transferred by diskette to the correct computer.

In this option the Financial Institution Tax Program is downloaded as four individual files. Each file is less than 1.44 MB and will fit on a 3½" high density diskette.

Download each file into a single temporary directory. Run each of the file names to extract. The program will prompt the labeling and inserting of blank diskettes into the disk drive, and will extract the program onto the diskettes. Run "setup.exe" from disk 1 to install.

### Diskettes

The Office of State Tax Commissioner will provide a set of diskettes which contain the program if access to the Internet is not available. Call 701-328-2046 to obtain the diskettes.

### Start . . .

- If the program is properly installed on the computer, the Main Menu will appear on the monitor;
- From the Main Menu, select an option by clicking on the appropriate button.

## General instructions

### Who must file

A financial institution located or doing business within North Dakota must file a North Dakota financial institution tax return, Form 35.

**Important: Form 35 replaces Forms 49, 49.1, 39B and, in certain cases, Form 40.**

A financial institution includes a(n):

1. Corporation or other business entity registered under state law as a bank holding company, registered under the Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the National Housing Act, as amended;
2. National bank organized and existing as a national bank under the National Bank Act;

3. Savings association or federal savings bank as defined under the Federal Deposit Insurance Act;
4. Bank or thrift institution incorporated or organized under the laws of any state;
5. Trust company organized under the laws of any state, the United States, a dependency or insular possession of the United States, or a foreign country;
6. Corporation organized under Public Law 63-6, § 25A (relating to foreign banking);
7. Agency or branch of a foreign depository as defined under Public Law 95-369;
8. Production credit association organized under the Farm Credit Act of 1933;
9. Corporation whose voting stock is more than 50% owned directly or indirectly by any of the entities described in 1 through 8

above. This does not include an insurance company taxable under N.D.C.C.

§ 26.1-03-17 or a corporation taxable under N.D.C.C. ch. 57-38;

10. Corporation or other business entity deriving more than 50% of its total gross income for financial accounting purposes from finance leases; or
11. Any other person or business entity deriving more than 50% of its gross income from activities that entities described in 2 through 8 and 10 above are authorized to transact. This does not include an insurance company taxable under N.D.C.C. § 26.1-03-17, a real estate broker, a securities dealer, or a person or entity taxable under N.D.C.C. ch. 57-38.

## Taxable year

Form 35 must be completed on a calendar year (*January through December*) basis, regardless of the taxable year used for federal tax purposes.

Financial institutions whose federal taxable year ends on a date other than December 31 must provide a statement reconciling their fiscal year tax information to a calendar year basis.

A financial institution which was previously subject to the provisions of N.D.C.C. ch. 57-38 and filed its North Dakota corporation income tax return, Form 40, on a fiscal year basis, is now required to file its financial institution tax return, Form 35, on a calendar year basis. If applicable, a Form 40 must be completed for the full fiscal year ending in 1997, and a financial institution tax return must be completed for the short period beginning in 1997 and ending on December 31, 1997.

## When to file

Form 35 must be filed on or before April 15 following the end of the calendar year.

**Extension of time to file.** An extension of time to file Form 35 may be obtained in one of the following ways:

- **Federal extension**

If an extension of time to file the federal income tax return is obtained, the federal extension is automatically accepted for North Dakota financial institution tax purposes. The extended due date for Form 35 is the same as the extended due date for the federal return.

- **State extension**

If a federal extension is not obtained, or if an extension of time beyond the time period covered by a federal extension is needed, a North Dakota extension may be obtained by completing and filing North Dakota Form F-101, or by submitting a written request prior to the due date (*or extended due date*) of the return.

If an extension is obtained, check the extension box at the top of Form 35, page 1 and enclose a copy of the federal extension form or the approved North Dakota extension request to Form 35.

**An extension of time to file Form 35 does not extend the time to pay any net tax liability due. If an extension of time to file the return is obtained, see "Payment of tax" for information on how and when to pay.**

## How to file

Form 35 must be filed on a 3½" diskette. The return consists of a properly completed Form 35 contained on the diskette, a properly

completed and signed 1997 Financial Institution Tax Diskette Remittance Form, and all required enclosures.

## Reporting methods

The North Dakota financial institution tax applies only to that portion of a financial institution's taxable income which is derived from or attributable to sources within North Dakota.

A financial institution must file using the applicable method below:

- **Single entity method**

Except where the combined report method applies, a financial institution must use the single entity method of filing.

- **Combined report method**

The combined report method must be used if the financial institution is engaged in a unitary business and one or more of the financial institutions in the unitary group conducts business within and without North Dakota. The combined report method must also be used if the unitary business has at least one financial institution operating solely within North Dakota and at least one financial institution operating entirely without North Dakota.

A unitary business is a group of financial institutions carrying on activities in which its component parts transfer value among themselves through:

1. Unity of ownership—The group is under the common control of a single financial institution which is also a member of the group. Control exists when the single financial institution owns, directly or indirectly, more than 50% of the voting stock of another financial institution;
2. Unity of operation—The group receives benefits from functional integration or economies of scale; and
3. Unity of use—The group contributes to or receives benefits from centralized management and policy information.

A consolidated North Dakota financial institution tax return may not be filed by two or more financial institutions, even though the combined report method applies. Each financial institution must file its own return.

## Payment of tax

The financial institution net tax liability is payable as follows:

- **State general fund portion—  
Due APRIL 15, 1998**

The state general fund portion of the net tax liability (*on Form 35, page 1, line 22*) must be paid on or before April 15, 1998. If an extension of time to file the return is

obtained, the financial institution must determine the state general fund portion of its net tax liability and remit this amount along with Form 35PV, North Dakota Financial Institution Payment Voucher.

- **Financial institution tax distribution fund portion—  
Due JANUARY 15, 1999**

The financial institution tax distribution fund portion of the net tax liability (*on Form 35, page 1, line 22*) must be paid on or before January 15, 1999. The Office of State Tax Commissioner will send a payment notification to the financial institution prior to the January 15, 1999, due date.

Payment for each portion of the tax must be made by check or money order payable to:  
**State Tax Commissioner.**

## Penalty and interest

The Office of State Tax Commissioner will notify the taxpayer of any penalty and interest owed on tax due and any interest accrued on a refund. If desired, penalty and interest amounts may be computed and entered on the return by the taxpayer.

If the full amount of the tax is not paid by the due date, the current provisions for penalty and interest are:

- A penalty equal to 5% of the tax due or \$5.00, whichever is greater; and
- Interest computed at the rate of 1% per month (*or a fraction of a month*), of the tax due except the month in which the tax became due.

If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (*or a fraction of a month*) during which the delinquency continues, not to exceed 25% of the net tax liability.

If there is an overpayment on Form 35, page 1, line 25, interest at the rate of 10% per year accrues on the overpayment beginning sixty days after the due date of the return (*without extension*) or after the date the return is filed, whichever date is later.

## Enclosures

A true and complete copy of the federal income tax return as filed with the Internal Revenue Service must be enclosed with Form 35.

In addition, if the financial institution is included in a consolidated federal income tax return, the following must be enclosed with Form 35:

- A copy of pages 1-4 of the consolidated federal income tax return as filed with the Internal Revenue Service; **and**



- A copy of the financial institution's pro forma separate company federal income tax return(s); **or**
- A schedule showing gross income and deductions, by company, which supports the consolidated taxable income.

## Incomplete return

All applicable lines on Form 35 must be completed. A return with incomplete lines or schedules, or with notations such as "see attached statement" or "available upon audit," is not properly filed and will be returned to the taxpayer.

## Subchapter S corporation shareholder statement

On or before the date on which Form 35 is filed, a financial institution that is a Subchapter S corporation must give a statement to each shareholder—limited to individuals, estates and trusts—containing all of the following:

1. Name, address and federal EIN of the financial institution;
2. Calendar year for which the statement is provided;
3. An amount, identified as "N.D.C.C. ch. 57-35.3 adjustment amount," equal to the shareholder's pro rata share of the adjustment amount below:

- If the Single Entity Method is used to complete Form 35, the adjustment amount is determined by subtracting the amount on Schedule B, line 15 from the amount on page 1, line 1 and multiplying the difference by the apportionment factor (page 1, line 5), and then adding to this result the amount on page 1, line 7.
- If the Combined Report Method is used to complete Form 35, the adjustment amount is determined by subtracting the amount on Schedule B, line 15 from the amount on Schedule A, line 4 and multiplying the difference by the apportionment factor (page 1, line 5), and then adding to this result the amount on page 1, line 7; and

4. The statement: **This statement contains information that is important to the preparation of your North Dakota income tax return. For instructions on how to report this information on your North Dakota income tax return, contact the North Dakota Office of State Tax Commissioner and ask for the *Income Tax Guideline: Adjustment For Income (Loss) From S Corporation Subject To N.D.C.C. ch. 57-35.3*.**

## Amended returns

In general, an amended return must be filed if:

- An amended federal income tax return is filed;
- North Dakota income is changed as the result of a federal audit;
- An error is discovered on a previously filed return; or
- A refund of federal income tax deducted on a previously filed North Dakota return is received.

### Amended returns for taxable years

**beginning before January 1, 1997.** Except for taxpayers who filed Form 40, obtain a blank copy of the applicable form for the taxable year affected. Write "Amended" at the top of the form and complete the form using the revised information.

Taxpayers who filed Form 40 must use Form 40X.

### Amended returns for taxable years

**beginning after December 31, 1996.** Obtain a blank Form 35 from the Office of State Tax Commissioner's home page for the appropriate taxable year, check the amended box and complete the form through the net tax liability line (*line 22*) using the revised information. Label the diskette with the words "Amended - Form 35."

## Specific line instructions for Form 35, page 1

### Line 1

Check the box for the reporting method used to complete the return and enter the federal taxable income reportable under that method. (See **Reporting methods** on page 1 of the general instructions to determine which method must be used.)

If the **Single Entity Method** is used for both North Dakota and federal purposes, enter the federal taxable income from:

- Federal Form 1120, line 30; or
- Federal Form 1120-A, line 26; or
- Federal Form 1120S, Schedule K, line 23.

If the **Single Entity Method** is used for North Dakota purposes and the financial institution is included in a consolidated federal form 1120, enter the financial institution's federal taxable income before consolidating adjustments/eliminations from:

- A pro forma separate company federal income tax return, line 30; or
- The schedule showing gross income and deductions, which supports the consolidated federal taxable income.

If the **Combined Report Method** is used, enter the amount from Schedule A, line 10.

### Line 7

Enter nonbusiness income allocated to North Dakota less related expenses. Nonbusiness income is allocated to North Dakota if the income is attributable to North Dakota. Expenses must be attributed to this income in a manner which fairly distributes all of the financial institution's expenses to its various types of income.

### Line 10

A net operating loss attributable to North Dakota sources incurred for a taxable year beginning after December 31, 1990, is deductible for financial institution tax purposes. A North Dakota net operating loss may only be carried forward for the same number of years allowed under federal income tax law. Enter the accumulated amount of North Dakota net operating losses incurred for taxable years beginning after December 31, 1990, less the accumulated amount of the same losses previously deducted.

In the case of a financial institution that was subject to N.D.C.C. ch. 57-38 for taxable years beginning before January 1, 1997, a net operating loss attributable to North Dakota sources incurred for **any taxable year** is deductible for financial institution tax purposes. A North Dakota net operating loss may only be carried forward for the same number of years allowed under federal income tax law. Enter the accumulated amount of North Dakota net operating losses incurred less the accumulated amount of the same losses previously deducted.

**Enclose a worksheet showing the amount of North Dakota net operating loss incurred and deducted for each year.**

### Line 15

If the financial institution made a qualifying investment in the North Dakota Small Business Investment Company, enter 50% of the amount invested. This credit may not reduce the financial institution tax liability below the \$50.00 minimum. Any unused credit may be carried forward up to seven calendar years.

**Enclose a copy of the North Dakota SBIC Investment Reporting Form.**

## Lines 19 and 20

Tax credits are available for making contributions to qualifying nonprofit private institutions of secondary and higher education located in North Dakota (*including the North Dakota Independent College Fund*). The credits are available if the contribution(s) are made by the due date of this return. The tax credits may reduce only the state general fund portion of the financial institution tax liability, but not below the \$14.00 minimum (*2/7 of the \$50.00 total minimum tax*.) The tax credit for contributions made to all eligible schools in **each** category of institution is equal to the lesser of:

- 50% of the contributions;
- 5.7% (.057) of the financial institution tax balance on line 16; or
- \$2,500.00.

Enter on line 19 the tax credit computed for contributions to nonprofit private institutions of higher education (*and the North Dakota Independent College Fund*), and enter on line 20 the tax credit computed for contributions to nonprofit private institutions of secondary education.

**For each contribution, enclose a copy of a receipt from the nonprofit private institution or a cancelled check (front and back).**

## Line 21

If there is an overpayment of the tax imposed by N.D.C.C. ch. 57-35 or 57-35.1 for 1996, and the 1997 financial institution distribution fund portion of the tax has not been paid, the overpayment is allowed as a credit on this line. The credit may not reduce the 1997 financial institution distribution fund portion of the tax below the \$36.00 minimum (*5/7 of the \$50.00 total minimum tax*.)

## Line 22

The state general fund portion of the net tax liability for 1997 is due April 15, 1998. The minimum tax due is \$14.00.

The financial institution tax distribution fund portion of the net tax liability for 1997 is due January 15, 1999. The minimum tax due is \$36.00. The Office of State Tax Commissioner will send a payment notification to the financial institution prior to the January 15, 1999, due date.

Each payment must be made by check or money order payable to:  
**State Tax Commissioner**

## Amended return only (Lines 29 through 34)

Lines 29 through 34 apply only if this is an amended return. See **Amended returns** in the general instructions on page 2 for more information.

## Line 32

### (Amended return only)

If there is tax due on line 30, enter on this line:

- A penalty equal to 5% of the tax due or \$5.00, whichever is greater; and
- Interest computed at the rate of 1% per month (*or a fraction of a month*), of the tax due except the month in which the tax became due.

If there is an overpayment on line 31, interest at the rate of 10% per year accrues on the overpayment beginning sixty days after the due date of the original return (*without extension*), or after the date the return was filed, or after the date the tax was fully paid, whichever date is later.

# Specific line instructions for Schedule B: Statutory adjustments

**North Dakota statutory adjustments must be made on a basis consistent with the filing method indicated on Form 35, page 1, line 1.**

## Additions

### Line 3

Enter all taxes, including franchise and privilege taxes, measured by income which were paid to any taxing authority (*including a foreign country*) and deducted in determining federal taxable income.

### Line 4

Enter interest income from state and local obligations, including the State of North Dakota and its political subdivisions, which is exempt from federal income tax.

### Line 5

Enter the amount of charitable contributions deducted in determining federal taxable income under Section 170 of the Internal Revenue Code.

### Line 6

**Applies only to a building and loan or a savings and loan association**

Enter the amount of a bad debt reserve deduction computed in determining federal taxable income under Section 585 of the Internal Revenue Code.

## Subtractions

### Line 9

**Applies only to a bank holding company or a savings and loan holding company**

Enter dividends received from a corporation subject to North Dakota tax under N.D.C.C. ch. 57-38 (*relating to income tax*) or N.D.C.C. ch. 57-35.3 (*relating to financial institution tax*). The amount of dividends that may be entered on this line is equal to the dividends received multiplied by the payor corporation's North Dakota apportionment factor.

### Line 10

**Applies only to a building and loan or a savings and loan association, use this line only if an entry is made on Schedule B, line 6.**

If the bad debt reserve method under Section 585 of the Internal Revenue Code is used to account for bad debts for federal income tax purposes, enter an amount equal to the deduction that would have been allowed under Section 166(a) of the Internal Revenue Code if a deduction had not been claimed under Section 585 or 593 of the Internal Revenue Code.

### Line 11

Enter the amount of any adjustment taken into account for federal income tax purposes under Section 593(g) of the Internal Revenue Code.

### Line 12

Enter any interest expense and other expenses relating to income exempt from federal income tax if:

- The federally-exempt income is taxable under the financial institution tax; **and**
- The interest expense and other expenses were disallowed as deductions in determining federal taxable income under Sections 171(a)(2), 265, or 291 of the Internal Revenue Code.

### Line 14

Enter an amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under Section 170 of the Internal Revenue Code if the percentage limitation under Section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable years to North Dakota taxable income rather than federal taxable income. For this purpose, North Dakota taxable income is to be computed without regard to the deduction on this line and, if applicable, the deduction on Schedule B, line 10. In addition, no deduction is allowed for a contribution made to a nonprofit private institution of secondary or higher education if and to the extent that a tax credit is allowed. (*See Form 35, page 1, lines 19 and 20.*)

**Line 15**

Enter all nonbusiness income less related expenses. The method used to attribute expenses to nonbusiness income must fairly distribute all of the financial institution's deductions to all of its various types of income.

If an entry is made on this line, the following must be enclosed with Form 35:

- A worksheet showing each type of income or loss item allocated and its amount;

- Documentation showing the state to which the item of income or loss was allocated (*a copy of the other state's tax return is preferred*); and
- A narrative explaining the reasons for allocating each item of income or loss.

## Specific line instructions for Schedule C: Apportionment factor

**This schedule must be completed by a financial institution that conducts its business activity within and without North Dakota, and must be completed on a basis consistent with the filing method indicated on Form 35, page 1, line 1.**

The amounts to enter for property, payroll, and receipts must be for the calendar year for which the return is filed. For a complete discussion of the apportionment factor, see N.D.C.C. §§ 57-35.3-13, et. seq.

**Property factor**

The property factor is a fraction, the numerator of which is the average value of the financial institution's property within North Dakota and the denominator of which is the average value of the financial institution's or the unitary group's property within and without North Dakota.

Only include property for which the income or expenses are included, or would have been included if not fully depreciated or expensed, in the computation of the apportionable income base.

Do not include the value of construction in progress.

**Average value of owned property.** The "average value" of owned property is determined by adding the value of the property on the first and last days of the calendar year and dividing the sum by two. If this general averaging method does not properly reflect average value, the taxpayer may elect, or the tax commissioner may require, averaging on a more frequent basis. The valuation of the property depends on the type of property—see the specific line instructions for lines 1 through 6 for how to value the property. The valuation of rental property is discussed in the specific instructions for line 7.

**Property located within North Dakota.** In general, property is located within North Dakota if it is physically located or used within North Dakota. The following apply for determining whether certain types of property are located within North Dakota:

- Transportation property is located within North Dakota to the extent it is used within this state. A motor vehicle is deemed used entirely within North Dakota if it is registered in this state. An aircraft is deemed used within this state to the extent of the number of landings within North Dakota. If the extent of use within North Dakota cannot be determined, transportation property is deemed to be used wholly within this state if its principal base of operations is within North Dakota.
- Loans and credit card receivables are located within North Dakota if properly assigned to a regular place of business within this state. They are properly assigned if there is a preponderance of substantive contacts with a regular place of business within North Dakota. Substantive contacts—solicitation, investigation, negotiation, approval, and administration of the loan—are determined based on the facts and circumstances of each case.

**Lines 1 through 3****Buildings and other fixed depreciable assets, land, and inventories**

In the North Dakota column, enter the average value of buildings and other fixed depreciable assets, land, and inventories owned by the financial institution and located within North Dakota. These assets must be valued at the original cost or other basis used for federal income tax purposes without regard to depreciation, amortization or depletion.

In the Total column, enter the average value of the same types of property located or used within and without North Dakota.

**Line 4****Loans**

In the North Dakota column, enter the average value of loans located within North Dakota. Value loans at their outstanding principal balance without regard to any reserve for bad debts. Do not include the portion of a loan charged off or a specifically allocated reserve that is treated as charged off for federal income tax purposes.

In the Total column, enter the average value of loans located within and without North Dakota.

**Line 5****Credit card receivables**

In the North Dakota column, enter the average value of credit card receivables located within North Dakota. Value credit card receivables at their outstanding principal balance without regard to any reserve for bad debts. Do not include the portion of credit card receivables charged off for federal income tax purposes.

In the Total column, enter the average value of credit card receivables located within and without North Dakota.

**Line 6****Other**

In the North Dakota column, enter the average value of property not included on lines 1 through 5 which is located within North Dakota.

In the Total column, enter the average value of property not included on lines 1 through 5 which is located within and without North Dakota.

**Line 7****Rental property**

For leased real and tangible personal property located within North Dakota, enter in the North Dakota column the amount determined by multiplying the annual gross rents by eight. Do not include on this line payments for leased property which is deemed to be owned by the financial institution under federal income tax law.

In the Total column, enter the amount determined by multiplying by eight the annual gross rents on all leased real and tangible personal property that is located within and without North Dakota.

If this general valuation method results in inaccurate valuations, the taxpayer may request, or the tax commissioner may require, another method of valuation.

**Payroll factor**

The payroll factor is a fraction, the numerator of which is the total compensation paid within North Dakota and the denominator of which is the total compensation paid by the financial institution or the unitary group within and without North Dakota. Only include compensation included in the computation of the apportionable income base for the calendar year.



"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services to the extent the amount is included in the employees' gross income as defined under the Internal Revenue Code.

Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

- The employee's services are performed entirely within this state.
- The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state.
- If the employee's services are performed both within and without this state, the employee's compensation must be attributed to North Dakota:
  1. If the employee's principal base of operations is within North Dakota;
  2. If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or
  3. If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

## Line 9

### Wages, salaries, commissions and other compensation

In the North Dakota column, enter compensation paid within North Dakota to employees for personal services.

In the Total column, enter compensation paid within and without North Dakota to employees for personal services.

## Receipts factor

The receipts factor is a fraction, the numerator of which is the financial institution's receipts within North Dakota and the denominator of which is the financial institution's or the unitary group's receipts within and without North Dakota. In general, only include receipts which constitute business income and are included in the computation of the apportionable income base for the calendar year.

## Line 10

### Rentals and subrentals

Enter in the North Dakota column:

- Rents from the lease of real property owned by the financial institution and located within North Dakota;
- Rents from the sublease of real property located within North Dakota;

- Rents from the lease of tangible personal property (*except transportation property*) owned by the financial institution and located within North Dakota when first placed in service by the lessee; and
- Rents from the lease of transportation property to the extent used in North Dakota. A motor vehicle is deemed used entirely within North Dakota if registered in this state. An aircraft is deemed to be used in this state to the extent of the number of landings in North Dakota. If the extent of use in North Dakota cannot be determined, transportation property is deemed used entirely within this state if the property has its principal base of operations in North Dakota.

In the Total column, enter total rents within and without North Dakota from the lease and sublease of the same types of property.

## Line 11

### Interest (including fees or penalties in the nature of interest)

Enter in the North Dakota column:

- Interest from loans **secured** by real property if:
  1. The real property is located within North Dakota,
  2. The real property is located within and without North Dakota and more than fifty percent of the fair market value of the real property is located within North Dakota, or
  3. More than fifty percent of the fair market value of the real property is not located within any one state and the borrower is located within North Dakota;
- Interest from loans **not secured** by real property where the borrower is located within North Dakota;
- Interest from credit card receivables and fees (*such as annual fees*) charged to cardholders, where the cardholder's billing address is within North Dakota; and
- Interest from investment/trading assets and activities. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter total interest receipts within and without North Dakota from the same sources.

## Line 12

### Net gains from sales or exchanges

"Net gains" is the sum of all gains resulting from the sale of loans, credit card receivables, and investment/trading assets. A loss resulting from such sales is excluded from the computation of net gains. Net gains must be computed for each category below.

Enter in the North Dakota column:

- Net gains from the sale of loans **secured** by real property, (*including income recorded*

*under the coupon stripping rules of Section 1286 of the Internal Revenue Code*) determined by multiplying the net gains by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **secured** by real property reported in the receipts factor on line 11;

- Net gains from the sale of loans **not secured** by real property, (*including income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code*) determined by multiplying the net gains by a fraction, the numerator and denominator of which consists of the respective amounts of interest from all loans **not secured** by real property reported in the receipts factor on line 11;
- Net gains from the sale of credit card receivables determined by multiplying the net gains by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all credit card receivables included in the receipts factor on line 11; and
- Net gains from the sale of investment/trading assets. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter the total net gains within and without North Dakota from the same sources.

## Line 13

### Dividends

In the North Dakota column, enter dividends from investment/trading assets and activities. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter total dividends from investment/trading assets and activities within and without North Dakota.

## Line 14

### Loan servicing fees

Enter in the North Dakota column:

- Loan servicing fees for loans owned by the financial institution and **secured** by real property, multiplied by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **secured** by real property reported in the receipts factor on line 11;
- Loan servicing fees related to loans owned by the financial institution and **not secured** by real property, multiplied by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **not secured** by real property reported in the receipts factor on line 11; and
- Loan servicing fees received for servicing secured or unsecured loans of others if the borrower is located within North Dakota.



In the Total column, enter total loan servicing fees within and without North Dakota from the same sources.

## Line 15

### Other

Enter in the North Dakota column:

- Receipts from credit card merchant discount if the commercial domicile of the merchant is within North Dakota. Reduce these receipts by any related cardholder chargebacks. Do not reduce these receipts by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders;
- Credit card issuer's reimbursement fees equal to the amount determined by multiplying the fees by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all credit card receivables included in the receipts factor on line 11;
- Receipts from services not otherwise apportioned if:
  1. The services are performed within North Dakota; or
  2. The services are performed within and without North Dakota and a greater proportion of the income-producing activity is performed within North Dakota based on cost of performance; and
- Any other receipts, including receipts from investment/trading assets and activities, not specifically described in the instructions for lines 10 through 14 which are properly included in the apportionable income base.

In the Total column, enter total other receipts within and without North Dakota from the same sources.

## Line 16

### Throwback receipts

If the financial institution's commercial domicile is in North Dakota, enter on this line (*in the North Dakota column*) any receipts included in the denominator but not in the numerator of lines 10 through 15 which were assigned to states in which the financial institution is not subject to tax.

## Investment and trading receipts

### Information in this section

- Defines what is meant by investment/trading assets and activities;
- Describes which receipts from investment/trading assets and activities to include in the receipts factor on Schedule C; and
- Explains how to determine the amount of receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule C.

### Investment/trading assets and activities defined

Investment/trading assets and investment activities include:

- Investment securities;
- Trading account assets;
- Federal funds;
- Securities purchased and sold under agreements to resell or repurchase;
- Options;
- Futures and forward contracts;
- Notional principal contracts (*such as swaps*);
- Equities;
- Foreign currency transactions; and
- Other investment/trading assets and activities.

### Receipts to include in receipts factor on Schedule C

Interest, dividends, net gains from sales or exchanges, and other income from investment/trading assets and activities are included in the receipts factor on Schedule C. Also included are:

- The amount by which interest income from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and
- The amount by which interest, dividends, gains and other income from trading assets and activities (*including assets and activities in the matched book, in the*

*arbitrage book, and foreign currency transactions*) exceeds amounts paid in lieu of interest and dividends plus losses from the same assets and activities.

### Receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule C

The amount of receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule C must be determined under one of the following methods:

#### Method 1 (*Average value method*)

Under this method, multiply the income from investment/trading assets and activities by the following fraction:

---

AVERAGE VALUE of investment/trading assets assigned to a regular place of business within North Dakota

---

AVERAGE VALUE of all investment/trading assets within and without North Dakota

---

For this purpose, "AVERAGE VALUE" is determined in the same manner as the average value of tangible personal property is determined for property factor purposes. See instructions for **Property Factor** on page 5.

#### Method 2 (*Gross income method*)

Under this method, multiply the income from investment/trading assets and activities by the following fraction:

---

GROSS INCOME of investment/trading assets assigned to a regular place of business within North Dakota

---

GROSS INCOME of all investment/trading assets within and without North Dakota

---

If the taxpayer elects, or the tax commissioner requires the use of Method 2 (*Gross income method*), the taxpayer must use Method 2 on all subsequent tax returns unless the taxpayer obtains prior permission from the tax commissioner to use, or the tax commissioner requires, a different method.

**For more information regarding investment and trading receipts, refer to N.D.C.C. § 57-35.3-15(13).**

## Specific line instructions for Schedule D: Federal income tax deduction

Use the line instructions that apply to the box that is checked on Form 35, page 1, line 1.

### Single Entity Method

A financial institution filing as a single entity for **both** North Dakota and federal purposes must complete lines 1, 2, 3, 7, 8, 9, 10, 11, 12, 13 and 19.

A financial institution filing as a single entity for North Dakota purposes **and** included in a consolidated Federal Form 1120 must complete lines 1-13 and 19.

#### Line 1

Enter the federal income tax liability from the federal income tax return as follows:

- If Federal Form 1120 was used, enter the amount from line 31; or
- If Federal Form 1120-A was used, enter the amount from line 27; or
- If Federal Form 1120S was used, enter the sum of:
  1. Investment credit recapture tax computed on Federal Form 4255 included on line 22c; and
  2. Total additional tax due to LIFO recapture under Section 1.1363-2 of the Federal Income Tax Regulations, included on line 22c.

#### Line 2a

Enter the total amount of adjustments from Federal Form 4626, Page 1, that **do not** become a part of North Dakota net income.

#### Line 2b

Enter 75% of the total federal adjusted current earnings (ACE) adjustments from the federal ACE worksheet, that **do not** become a part of North Dakota net income.

#### Line 2d

Enter the amount of the financial institution's federal alternative minimum taxable income from the federal form 4626.

#### Line 2f

Enter the financial institution's federal alternative minimum tax. Enclose a worksheet.

#### Line 4

Enter the financial institution's federal income tax liability. Enclose a worksheet substantiating this computation.

#### Line 5

Enter the total federal income tax liability for all corporations included in the consolidated federal return with each corporation's federal income tax liability computed on a pro forma separate company return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet substantiating this computation.

#### Line 9

Enter the income (*before apportionment*) included on line 8 not taxable to North Dakota, such as income allocated outside North Dakota.

### Combined Report Method

The following line instructions apply to a financial institution filing its North Dakota return using the combined report method.

**If a financial institution tax return includes income from more than one federal tax return, a separate pro forma Schedule D must be completed for each financial institution that filed a federal tax return. The amounts on lines 1, 2, 3, 7, 8 and 12 from the separate pro forma Schedule D's must be aggregated and the totals entered on the appropriate lines on the financial institution's Form 35.**

**Enclose a worksheet substantiating the computations on the separate pro forma schedules.**

#### Line 1

Enter the federal income tax liability from the federal income tax return as follows:

- If Federal Form 1120 was used, enter amount from line 31; or
- If Federal Form 1120-A was used, enter the amount from line 27.
- If Federal Form 1120S was used, enter the sum of:
  1. Investment credit recapture tax computed on Federal Form 4255 included on line 22c; and

2. Total additional tax due to LIFO recapture under Section 1.1363-2 of the Federal Income Tax Regulations, included on line 22c.

#### Line 2a

Enter the total amount of adjustments from Federal Form 4626, Page 1, that **do not** become a part of North Dakota net income.

#### Line 2b

Enter 75% of the total Federal adjusted current earnings (ACE) adjustments from the Federal ACE worksheet, that **do not** become a part of North Dakota net income.

#### Line 2d

If a member of a Federal consolidated group, enter the amount of Federal alternative minimum taxable income from the consolidated Federal Form 4626.

#### Line 2f

If a member of a Federal consolidated group, enter the amount of Federal alternative minimum tax from the consolidated Federal Form 1120, Schedule J.

#### Line 4

Enter the separate company pro forma federal income tax liability for all of the unitary financial institutions which are included in the consolidated federal return. The separate company tax liability of any financial institution which does not result in a positive tax liability shall be zero. Enclose a worksheet substantiating this computation.

#### Line 5

Enter the total pro forma separate company federal income tax liability for all corporations included in the consolidated federal return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet substantiating this computation.

#### Line 8

Enter the total federal taxable income for all unitary financial institutions whose income is included in the Federal Form 1120. Enclose a worksheet substantiating this computation.

#### Line 9

Enter the income (*before apportionment*) included on line 8 not taxable to North Dakota such as income allocated outside North Dakota.

**Line 15**

"Total income" is federal taxable income of those financial institutions which are included in the unitary group and are required to file a federal income tax return, plus or minus the adjustments (**before apportionment**) provided in N.D.C.C. § 57-35.3-02, except for the federal income tax deduction. Use the worksheet below to compute the total income to be entered on line 15.

1. Federal taxable income (from Schedule D, line 8) .....
2. Total additions (from page 1, line 2) .....
3. Balance (Add lines 1 and 2) .....
4. Total subtractions (from page 1, line 3) .....
5. Balance (Subtract line 4 from line 3) .....
6. Net intercompany adjustments in lines 2 and 4 .....
7. Total income (Subtract line 6 from line 5) Enter result here and on Schedule D, line 15 .....

**Line 16**

Enter the total taxable income from sources without the U.S., **after** loss recapture as computed on Federal form(s) 1118, Part II, Schedule B or Federal form(s) 5735.

## Specific line instructions for Schedule E: Deduction and carryforward of federal alternative minimum tax

North Dakota Schedule E is used to compute the deduction and carryforward of Federal Alternative Minimum Tax (AMT) which has been disallowed.

Federal AMT may be deducted only if a federal credit for prior year minimum tax is claimed; however, the deduction may not create or increase a North Dakota net operating loss.

The deduction of federal AMT disallowed is used to reduce North Dakota income on Form 35, page 1. Any portion of the disallowed federal AMT remaining after 1997 may be carried forward to future calendar years and used to reduce North Dakota income when a federal credit for prior year minimum tax is claimed.

**For more information regarding the deduction and carryforward of alternative minimum tax, refer to North Dakota Century Code § 57-38-01.3(1)(c) and North Dakota Administrative Code ch. 81-03-05.5.**